



Read the magazine that launched the Law2020™ initiative online at [www.iltanet.org](http://www.iltanet.org).

# T MINUS NINE: ONE YEAR IN

by John Alber, Strategic Technology Partner at Bryan Cave LLP

**A** year ago, my article “The Future Starts Now” appeared in *Peer to Peer*. In that article, I assessed the impact of changes in the legal marketplace that attended the Great Recession and addressed the question of whether those changes were permanent.

before the recession? Or has there been a sea change, a reset?

My view today is that we have indeed experienced a reset in the legal marketplace. It is different than it was before 2009, and it will remain different. To understand why that is, let’s go back to the original article.

A central point of the June 2010 article was framed this way:

*Both as a consequence of the Value Challenge and of the underlying dissatisfaction that necessitated it, the legal market over the last year and a half has seen a significant shift in buying habits. A number of surveys now show a sharp rise in demand for non-hours-based fee structures. A recent ACC survey reports that four out of five in-house lawyers expressed a desire to increase their spending on alternative fee arrangements (AFAs). Companies have also accelerated already-established trends toward reducing the number of law firms approved to provide services **and toward introducing purchasing disciplines** (such as RFPs) into the buying process. (emphasis added)*



Read John’s original article in the June 2010 issue of *Peer to Peer*.

The title to the article answered that question. In my view, we were already operating in the future. While the economy might improve, I asserted that some of the changes we’ve seen in how legal services are purchased and how they are paid for will become permanent features of the legal marketplace. Firms will rise or fall on their ability to deal effectively with that new reality.

## REITERATING A SIGNIFICANT POINT

It’s now 2011, and we are more than a year into the new decade. What is the evidence so far? Will things revert back to the way they were in the first decade of this millennium? Will law firms recover the ability to raise rates six or eight percent a year and thereby drive profitability to the levels we saw just

To my mind, the most significant point in the article — the one for which evidence continues to accumulate — is the bolded portion. The introduction of procurement disciplines (and let’s shift the terminology to procurement from purchasing because it’s the more modern term) into the acquisition of legal services is a change that will not be undone in better times.

## THE EVOLUTION OF PROCUREMENT

To understand why that is so, a little background might help. Wikipedia defines procurement as: “[T]he acquisition of goods and/or services . . . at the best possible total cost of ownership

# ONE YEAR IN

to meet the needs of the purchaser in terms of quality and quantity, time, and location.” Thus, procurement disciplines provide structure and management in connection with the acquisition of goods or services in order to assure the highest quality at the best price level.

Procurement practices grew up over the course of the last century. World Wars I and II saw the rise of procurement as a management discipline in order to meet the extraordinary demands for goods and services associated with global warfare. In the decades since World War II, those management disciplines crept further and further into corporate management practices, particularly as companies became more global in scope and their supply chains extended across borders.

I witnessed the impact of this while running a company in the transportation sector during the 1990s. During that decade, transportation services became subject to procurement management practices in a way never seen before. That was part of the “end-to-end supply chain management” revolution, during which companies undertook to manage every aspect of the sourcing, transportation, production and delivery of their manufactured goods. It changed the transportation industry forever — and a number of transportation companies did not survive the decade as a consequence.

In the time since then, companies have been extending procurement practices beyond the direct acquisition of materiel and production and delivery of goods. Procurement disciplines are now being extended into areas that do not directly touch the supply chain. Along the way, procurement has been elevated to a top discipline within corporate hierarchies, and it is often led by C-level executives — Chief Procurement Officers.

## ACCELERATING A PROCESS ALREADY IN MOTION

It was inevitable that the law department would eventually come under the gaze of CPOs. In my view, the Great Recession accelerated that process, but did not originate it. And that is a very important distinction. In fact, procurement practices were already creeping into law departments prior to the onset of the recession. Widespread fee auditing, either inside companies or with the aid of outside consultancies, is the best evidence of that.

What I see and what I think many industry observers see since the recession is a continuation of the process that had begun before the recession. It appears that the long-term role of procurement in the acquisition of legal services is assured. Foremost among all the evidence is the ever-expanding use of RFPs. Requests for Proposal are now used for most large portfolios of legal work and, more and more, are being used for

individual matters. They force intense competition among law firms, both over price and quality of services. And some firms are getting quite good at both responding to RFPs and managing the work that ensues once the competitions are won.

More evidence is found in the continued use of alternative fee arrangements (AFAs). Industry-wide statistics report rapid growth in such fee arrangements, and that has been my own firm’s experience as well. A key element of AFAs is the shifting of risk from the client to the law firm. Such risk-shifting has also taken place in many other industries that have gone through the procurement revolution. Think how tightly bound auto manufacturers or large retailers are to their suppliers now and how, as supply chain management became more and more pervasive, companies shifted risk to suppliers. As that happened, suppliers began to look more like partners and less like mere suppliers.

In my view, the same thing is happening in the legal marketplace. All the evidence I see is that procurement disciplines are exerting an ever-wider influence in the acquisition of legal services. Procurement officials are actually involved in face-to-face negotiations over new engagements on a more regular basis. I don’t think we’ll ever see that change walked back. The future is indeed now. **ILTA**

This article was first published in ILTA's June 2011 issue of *Peer to Peer* titled “Law2020™: One Year In” and is reprinted here with permission. For more information about ILTA, visit their website at [www.iltanet.org](http://www.iltanet.org).



John Alber is the Strategic Technology Partner at Bryan Cave LLP. He joined the firm in 1981 following a judicial clerkship and, in 1988, he left to serve as CEO for a software and database company in the transportation sector. In 1999, John rejoined the firm to set technology strategy. John has written and spoken widely on legal technology subjects and received a number of technology awards,

both in the legal field and in information technology generally. John has worked with ILTA's conference planning committees over several years, and he is instrumental in the creation and development of ILTA's Law2020™ initiative. He can be reached at [john.alber@bryancave.com](mailto:john.alber@bryancave.com).